

AG Contract No.: KR04-0761TRN  
ADOT ECS File No.: JPA 03-134  
Project No.: TEA-DGS-0 (004) A  
**TRACS No.: SL485 01C**  
Project: Landscaping & Sidewalk  
Construction  
**BUDGET SOURCE ITEM #:**

## INTERGOVERNMENTAL AGREEMENT

BETWEEN  
THE STATE OF ARIZONA  
AND  
THE CITY OF DOUGLAS

THIS AGREEMENT is entered into August 24, 2004 pursuant to Arizona Revised Statutes, Sections 11-951 through 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and THE CITY OF DOUGLAS, acting by and through its MAYOR and CITY COUNCIL (the "City").

### I. RECITALS

1. The State is empowered by Arizona Revised Statutes Section 28-401 and 28-334 to enter into this Agreement and has delegated to the undersigned the authority to execute this Agreement on behalf of the State.

2. The City is empowered by the Arizona Revised Statutes Section 48-572 to enter into this Agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the City.

3. Congress has authorized appropriations for, but not limited to, twelve eligible categories of transportation enhancement activities.

4. Such project within the boundary of the City has been selected by the City; the survey of the project has been completed; and the plans, estimates and specifications will be prepared and, as required, submitted to the Federal Highway Administration (FHWA) and the State for its approval.

5. The only interest of the State in this project is the in the acquisition of federal funds for the use and benefit of the City by reason of federal law and regulations under which funds for the project are authorized to be expended.

6. The City, in order to obtain federal funds for the construction of the project, is willing to provide the City funds to match federal funds in the ratio required or as finally fixed and determined by the City and FHWA.

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NO. 27029  
Filed with the Secretary of State  
Date Filed: 08/24/04  
Janice K. Brewer  
Secretary of State  
By: Timothy D. Greenwald

7. The work embraced in this Agreement is for the landscaping, upgrading the irrigation system, stamped concrete crosswalks at major intersections, ADA compliant sidewalks, curbs and gutters, drainage catch basins and driveways to appropriate standards on "A" Avenue from 10<sup>th</sup> Street to 23<sup>rd</sup> Street hereinafter referred to as the "Project". The City will be responsible for design, bidding, construction administration, maintenance, electrical power, water connections and landscape maintenance to the Project.

**Construction TRACS No.: SL485 01C**

Estimated Federal-aid Funds @ 94.3%

\$ 195,800.00

Estimated City Funds @ 5.7%

\$ 17,200.00

**\*Estimated Transportation Enhancement Sub-total**

**\$ 223,000.00**

\*(Includes construction, construction engineering administration and incidentals)

THEREFORE, in consideration of the mutual covenants expressed herein, it is agreed as follows:

**II. SCOPE OF WORK**

1. The State will:

a. Agree to be the City's authorized agent for the Project and submit a program containing the aforementioned project to FHWA with the recommendation that it be approved for construction and funding. Should cost exceed the maximum federal funds available, it is understood and agreed that the city will be responsible for any overage.

b. Approve the Project if such project construction funds are available by FHWA for construction of the Project. The State and FHWA hereby designated the City as lead agent to contract for and self-administer the project.

c. Upon execution of this Agreement, make payment to the City for the direct actual cost of the construction of the Project, plus construction engineering, within 30 days after receipt and approval of an invoice.

d. Not be obligated to maintain said Project, should the City fail to budget or provide for proper and perpetual maintenance as set forth in the Agreement.

2. The City will:

a. With the aid and consent of the FHWA and State using Arizona Procurement Procedures, proceed to advertise for, receive and open bids, subject to the concurrence of FHWA and State. Enter into contract(s) with a firm(s) to whom the award is made for the construction of the Project. The Project will be performed, completed, accepted and paid for in accordance with the requirements of the Project Plans, Special Provisions and Standard Specifications at the lowest bid price.

b. Provide personnel to administer and supervise construction. All construction Project change orders are to be copied to the State. The FHWA will participate in the construction administration cost provided by the City up to 15 percent (15%) of the cost of construction. Construction administration costs not participated in FHWA shall be borne by the City.

c. Consent to any inspections performed by the State, provide records or audit any books of the City in order for the State to assure itself that the monies on the Project have been spent and the Project completed in accordance with the plans and specifications, statutes, rules, and regulations of the State and Federal Government.

d. Upon execution of this Agreement invoice the State for the estimated 94.3% federal aid construction and construction administration costs addressed under this Agreement. The City is entirely responsible for all costs incurred in performing and accomplishing the work as set forth in this Agreement whether covered by federal funding or not.

e. Provide electrical power, water connections and landscape maintenance during and after the construction phase all the City's expense.

f. Upon completion of the Project, shall provide for, at its own cost and as an annual item in its budget, perpetual and proper maintenance of all enhancement improvements, including but not limited to; electrical power, water and landscape care.

### **III. MISCELLANEOUS PROVISIONS**

1. The State assumes no financial obligation or liability under this Agreement, or for any resulting construction project. The City, in regard to the City's relationship with the State only, assumes full responsibility for the design, plans, specifications, reports the engineering in connection therewith and the construction of the improvements contemplated, cost over-runs and construction claims. The City shall require its contractors to name the State and ADOT as an additional insured in the contractor's insurance policies. The City shall also require its contractors to name the State and ADOT as an additional indemnitee in the City's contracts with its contractors. It is understood and agreed that the State's participation is confined solely to securing federal aid; that any damages arising from carrying out, in any respect, the terms of this Agreement or any modification thereof, shall be solely the liability of the City and that to the extent permitted by law, the City hereby agrees to save and hold harmless and indemnify from loss the State, any of its departments, agencies, officers or employees from any and all cost and/or damage incurred by any of the above and from any other damage to any person or property whatsoever, which is caused by any activity, condition, misrepresentation, directives, instruction or event arising out of the performance or nonperformance of any provisions of this Agreement by the State, any of its departments, agencies, officers and employees the City, any of its agents, officers and employees, or any of its independent contractors. Cost incurred by the State, any of its departments, agencies, officers or employees shall include in the event of any action, court costs and expenses of litigation and attorney's fees.

2. The cost of the construction and construction engineering work covered by this Agreement is to be borne with FHWA and the City, each in the proportion prescribed or as fixed and determined by FHWA as stipulated in this Agreement. Therefore, City agrees to furnish and provide the difference between the total cost of the work provided for in this Agreement and the amount of federal aid received.

3. This Agreement shall remain in force and effect until completion of the work; provided, however, that any provisions in this Agreement for electrical power, water and maintenance shall be perpetual, unless assumed by another governmental entity.

4. This Agreement shall become effective upon filing with the Secretary of State.

5. This Agreement may be cancelled in accordance with Arizona Revised Statutes Section 38-511.

6. The provisions of Arizona Revised Statutes Section 35-214 pertaining to State audit are applicable to this contract. In the event of such an audit, the City will bare all costs associated therewith.

7. This Agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR parts 35 and 36. The parties to this Agreement shall comply with Executive Order Number 99-4 issued by the Governor of the State of Arizona and incorporated herein by referenced regarding "Non-Discrimination".

8. Non-Availability of Funds: Every payment obligation of the State under this contract is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this contract, this contract may be terminated by the State at the end of the period for which the funds are available. No liability shall accrue to the State in the event this provision is exercised, and the State shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

9. In the event of any controversy, which may arise out of this Agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes Section 12-1518.

10. All notices or demands upon any party to this Agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Arizona Department of Transportation  
Joint Project Administration  
205 S. 17<sup>th</sup> Avenue – MD 616E  
Phoenix, AZ 85007

City of Douglas  
Public Works Director  
425 10<sup>th</sup> Street  
Douglas, AZ 85607

11. In accordance with Arizona Revised Statutes Section 11-952, (D) attached hereto and incorporated herein is the written determination of each party's legal counsel that the parties are authorized under the laws of this state to enter into this Agreement and that the Agreement is in proper form.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

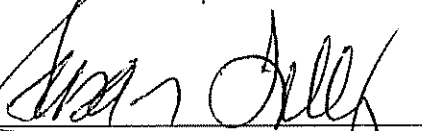
CITY OF DOUGLAS

STATE OF ARIZONA  
Department of Transportation

By

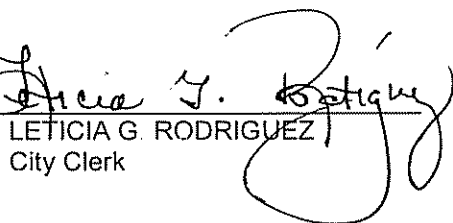
  
RAY BORANE  
Mayor

By

  
SUSAN TELLEZ  
Contract Administrator

ATTEST:

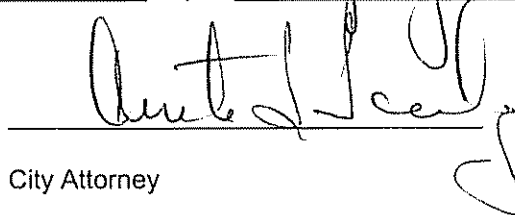
By

  
LETICIA G. RODRIGUEZ  
City Clerk

APPROVAL OF THE CITY OF DOUGLAS ATTORNEY

I have reviewed the above referenced proposed intergovernmental Agreement, between the DEPARTMENT OF TRANSPORTATION, TRANSPORTATION PLANNING DIVISION, and CITY OF DOUGLAS and declare this Agreement to be in proper form and within the powers and authority granted to the City under the laws of the State of Arizona. No opinion is expressed as to the authority of the State to enter into this Agreement.

DATED this 14<sup>th</sup> day of July, 2004.

  
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City Attorney

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**WHEREAS**, the Arizona Department of Transportation and the City of Douglas seek to enter into an Intergovernmental Agreement in the amount of \$195,800 for the landscaping and sidewalk enhancement along “A” Avenue from 10<sup>th</sup> Street to 23<sup>rd</sup> Street, and allocating \$17,200 as the City’s local matching funds; and

**WHEREAS**, it is in the best interests of the City of Douglas to enter into this agreement to provide needed improvements.

**Section 1.** The terms of said Intergovernmental Agreement are in the best interest of the City of Douglas.

**Section 3.** The officers of the City Council and the City of Douglas are hereby authorized and directed to fulfill all obligations under the terms of the Intergovernmental Agreement.

**PASSED AND ADOPTED** by the Mayor and Council of the City of Douglas, Arizona, this 14<sup>th</sup> day of July, 2004.

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By Ray Borane  
Ray Borane, Mayor

Attest:

By Leticia G. Rodriguez  
Leticia G. Rodriguez, City Clerk

Approved as to Form:

Anita L. Sanchez  
Anita L. Sanchez, City Attorney



TERRY GODDARD  
ATTORNEY GENERAL

OFFICE OF THE ATTORNEY GENERAL  
STATE OF ARIZONA

CIVIL DIVISION  
TRANSPORTATION SECTION  
WRITER'S DIRECT LINE: 602.542.8855

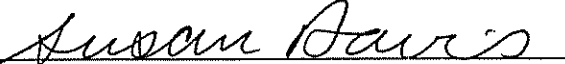
**INTERGOVERNMENTAL AGREEMENT**  
**DETERMINATION**

A.G. Contract No. KR04-0761TRN (**JPA 03-134**), an Agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED: August 17, 2004

TERRY GODDARD  
Attorney General

  
SUSAN E. DAVIS  
Assistant Attorney General  
Transportation Section